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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Bobby Ray Sharp,) No. CV 08-2316-PHX-DGC (JRI)
10 Plaintiff,) **ORDER**
11 vs.)
12 Maricopa County, et al.,)
13 Defendants.)
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15 Plaintiff Bobby Ray Sharp, who is confined in the Lower Buckeye Jail in Phoenix,
16 Arizona, has filed a civil rights Complaint pursuant to 42 U.S.C. § 1983 through counsel and
17 paid the \$350.00 filing fee. (Doc.# 1.)¹ The Court dismissed the Complaint with leave to
18 amend. (Doc.# 11.) Plaintiff has filed a First Amended Complaint. (Doc.# 12.) The Court
19 will order Defendants Maricopa County and Arpaio to answer Plaintiff's claims for
20 deliberate indifference to his serious medical needs in the First Amended Complaint and will
21 dismiss the remaining claims and Defendants without prejudice.

22 **I. Statutory Screening of Prisoner Complaints**

23 The Court is required to screen complaints brought by prisoners seeking relief against
24 a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C.
25 § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised
26 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may
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¹ "Doc.#" refers to the docket number of filings in this action.

1 be granted, or that seek monetary relief from a defendant who is immune from such relief.
 2 28 U.S.C. § 1915A(b)(1), (2).

3 **II. First Amended Complaint**

4 Plaintiff alleges violation of his constitutional right to adequate medical care. He sues
 5 Maricopa County, Maricopa County Sheriff's Office, Maricopa County Sheriff Joseph
 6 Arpaio, Maricopa County Correctional Health Services, and John Does I-X and Black
 7 Corporations I-V. Plaintiff seeks compensatory relief.

8 Plaintiff alleges the following facts: In March 2008, while he was incarcerated at the
 9 Lower Buckeye Jail, Plaintiff felt an abnormal growth on his rear palate. He experienced
 10 shortness of breath and severe pain in his mouth about which he "voiced . . . concerns" to
 11 unidentified jail staff. He was not treated but was instead ordered to his cell. The growth
 12 and pain dissipated overnight. In the following weeks, Plaintiff began to lose approximately
 13 10-15 pounds a week, but nurses dismissed his concerns by attributing the lost weight to
 14 Plaintiff's new exercise regimen. Plaintiff believed something else was causing the weight
 15 loss, but his concerns were dismissed. Two or three months after the growth had dissolved,
 16 Plaintiff became very ill and experienced a high fever, shortness of breath, excruciating pain,
 17 and swelling throughout his body. Plaintiff was "frequently unable to see the nursing staff"
 18 because he lacked the strength or assistance to do so. Plaintiff's requests to go to the
 19 emergency room were disregarded by nursing staff and he was only provided cold water to
 20 bring down his temperature. About six months after the growth had dissolved, Plaintiff was
 21 taken to the Maricopa County Hospital, where a cardiologist informed Plaintiff that a cyst
 22 in his throat had ruptured, infecting his body and attacking his muscles.

23 **III. Failure to State a Claim**

24 To state a claim under § 1983, a plaintiff must allege facts supporting that (1) the
 25 conduct about which he complains was committed by a person acting under the color of state
 26 law and (2) the conduct deprived him of a federal constitutional or statutory right. Wood v.
 27 Ostrander, 879 F.2d 583, 587 (9th Cir. 1989). In addition, a plaintiff must allege that he
 28 suffered a specific injury as a result of the conduct of a particular defendant and he must

1 allege an affirmative link between the injury and the conduct of that defendant. Rizzo v.
 2 Goode, 423 U.S. 362, 371-72, 377 (1976).

3 **A. Maricopa County Sheriff's Office and Correctional Health Services**

4 As the Court previously informed Plaintiff, the Maricopa County Sheriff's Office
 5 (MCSO) and Maricopa County Correctional Health Services (CHS) are not proper
 6 Defendants. (See doc.# 11.) In Arizona, the responsibility for operating jails and caring for
 7 prisoners is placed by law upon the sheriff, see A.R.S. §§ 11-441(A)(5), 31-101, and the
 8 County, see A.R.S. §§ 11-251(8), 11-291(A). MCSO is simply an administrative creation
 9 of the sheriff to allow him to carry out his statutory duties and is not a "person" amenable to
 10 suit pursuant to § 1983. Similarly, CHS is an administrative creation of the County to
 11 provide medical care to inmates. Accordingly, MCSO and CHS will be dismissed.

12 **B. Fictitiously-Named Defendants**

13 Plaintiff also again sues John Does I-X and Black Corporations I-V. Generally, the
 14 use of anonymous type appellations to identify defendants is not favored. Rule 10(a) of the
 15 Federal Rules of Civil Procedure requires the plaintiff to include the names of the parties in
 16 the action. The Ninth Circuit has held that where identity is unknown prior to the filing of
 17 a complaint, the plaintiff should be given an opportunity through discovery to identify the
 18 unknown defendants, unless it is clear that discovery would not uncover the identities, or that
 19 the complaint would be dismissed on other grounds. Wakefield v. Thompson, 177 F.3d
 20 1160, 1163 (9th Cir. 1999) (citing Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980)).
 21 If Plaintiff discovers the identities of these fictitiously-named defendants through the
 22 discovery process, or otherwise, he may seek leave of the Court to amend to name these
 23 individuals.

24 **IV. Claims for Which an Answer Will be Required**

25 Plaintiff sufficiently alleges that Maricopa County and Sheriff Arpaio had a policy or
 26 custom to deny constitutionally adequate medical care for his serious medical needs. These
 27 Defendants will be required to respond to these allegations.

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IT IS ORDERED:

(1) Defendants Maricopa County Sheriff's Office, Maricopa County Correctional Health Services, John Does I-X, and Black Corporations I-V are **dismissed** without prejudice. (Doc.# 12.)

(2) Defendants Maricopa County and Sheriff Arpaio must answer Plaintiff's claims for deliberate indifference to Plaintiff's serious medical needs contained in the First Amended Complaint. (Doc.# 12.)

(3) Plaintiff must serve Defendants Maricopa County and Sheriff Arpaio with the First Amended Complaint.

(4) Each Defendant must answer the First Amended Complaint or otherwise respond by appropriate motion within **30 days** from the date the First Amended Complaint is served on it or him.

(5) Any answer or response must state the specific Defendant by name on whose behalf it is filed. The Court may strike any answer, response, or other motion or paper that does not identify the specific Defendant by name on whose behalf it is filed.

(5) This matter is referred to Magistrate Judge Jay R. Irwin pursuant to Rules 72.1 and 72.2 of the Local Rules of Civil Procedure for all pretrial proceedings as authorized under 28 U.S.C. § 636(b)(1).

DATED this 12th day of March, 2009.



David G. Campbell
United States District Judge